

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

POWAY UNIFIED SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NO. 2013010764

ORDER GRANTING STUDENT'S
MOTION TO DISMISS

PROCEDURAL BACKGROUND

On January 25, 2013, the Poway Unified School District (District) filed a request for due process (complaint) with the Office of Administrative Hearings (OAH). The District asked that OAH find that the District's October and November 2011 triennial assessments and supplemental 2012 assessments of Student were appropriate such that Student was not entitled to independent educational evaluations (IEE's) at public expense in the areas of spelling, sensory processing, and written communication, including vocabulary. This case was set for a prehearing conference (PHC) on February 20, 2013, and for a due process hearing on February 26, 2013.

Separately pending is a due process case filed by Student in OAH Case No. 2012110589, which is scheduled to reconvene starting March 11, 2013. As one of his issues in that case, Student contends that the District has failed to assess him in all areas of suspected deficit.

On January 28, 2013, OAH denied the District's request to consolidate the two cases.

On February 20, 2013, Student filed a motion to dismiss the District's case in the instant matter. In his motion, Student stated that he has informed the District that he has withdrawn his request for independent educational evaluations and that therefore there was no longer any reason for this case to proceed.

The undersigned Administrative Law Judge (ALJ) convened the prehearing conference in this matter as scheduled on February 20, 2013. Attorney Justin Shinnefield appeared on behalf of the District. Student's mother appeared on behalf of Student. The ALJ recorded the proceedings.

At the PHC, Student reiterated his withdrawal of his request for IEE's. Student clarified that he believes any issues he presently has with the District's assessments are

contained in the issue he raised in OAH Case No. 2012110589, and that there was no need for him to separately pursue IEE's.

The parties engaged in a lengthy discussion concerning the scope of Student's pending case in OAH Case No. 2012110589, and the effect of his withdrawing his request for IEE's. Student, through his mother, indicated that he understood that the District had been required to file for due process based upon his initial request for the IEE's but that he was now withdrawing that request. The undersigned ALJ clarified for Student that if she granted Student's request to dismiss the instant case, the District was presently relieved of any responsibility for funding IEE's for Student or for filing to defend its assessments. Student's mother indicated that she understood the ramifications of the ALJ granting her request for dismissal.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

Under the doctrine of mootness, a court may refuse to hear a case because it does not present an existing controversy by the time of decision. (*Wilson v. Los Angeles County Civil Service Com.* (1952) 112 Cal.App.2d 450, 453.) However, mootness is not a jurisdictional defect. (*Plymouth v. Superior Court* (1970) 8 Cal.App.3d 454, 460.) A case may be moot when the court cannot provide the parties with effectual relief. (*MHC Operating Ltd. Partnership v. City of San Jose* (2003) 106 Cal.App.4th 201, 214.) An exception to the mootness doctrine is made if a case presents a potentially recurring issue of public importance. (*DiGiorgio Fruit Corp. v. Dept. of Employment* (1961) 56 Cal.2d 54, 58.)

The IDEA provides that under certain conditions a student is entitled to obtain an IEE at public expense. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502 (a)(1); Ed. Code, § 56329, subd. (b) [incorporating 34 C.F.R. § 300.502 by reference]; Ed. Code, § 56506, subd. (c) [parent has the right to an IEE as set forth in Ed. Code, § 56329; see also 20 U.S.C. § 1415(d)(2) [requiring procedural safeguards notice to parents to include information about obtaining an IEE].) "Independent educational assessment means an assessment conducted by

a qualified examiner who is not employed by the public agency responsible for the education of the child in question.” (34 C.F.R. § 300.502(a)(3)(i).) To obtain an IEE, the student must disagree with an assessment obtained by the public agency and request an IEE. (34 C.F.R. § 300.502(b)(1), (b)(2).)

When a student requests an IEE, the public agency must, without unnecessary delay, either file a request for due process hearing to show that its assessment is appropriate or ensure that an independent educational assessment is provided at public expense. (34 C.F.R. § 300.502(b)(2); Ed. Code, § 56329, subd. (c).)

DISCUSSION

Student asks OAH to dismiss the instant case, OAH Case No. 2013010764, because he has now withdrawn his request for District-funded IEE’s, thereby rendering this case moot. The District initially objected to Student’s motion to dismiss because it was not clear from Student’s motion whether he truly was withdrawing his requests for IEE’s. At the PHC, Student reiterated his position that he was withdrawing his request. The District is only obligated to pursue filing a due process request to defend its assessments where it declines a student’s request for IEE’s funded by the District. As Student has withdrawn his request, there is no matter in controversy and the District’s case is moot.

Student’s motion to dismiss is therefore granted. The District is presently relieved from its obligation to pursue due process to defend its assessments as Student has withdrawn his request for IEE’s. The District’s obligation to file for due process to defend its assessments will only arise again should Student re-new his request for IEE’s.

ORDER

Student’s motion to dismiss the District’s case in OAH Case No. 2013010764 is granted. This matter is dismissed.

Dated: February 20, 2013

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings